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IN THE

Supreme Court of the United States

October Term, 1958.

No. .....

SILAS A. CHAFFIN and JOHN J. HANEY and NANCY TYNER aka NANCY HANEY,

Appellants,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellees.

JURISDICTIONAL STATEMENT.

Pursuant to Rule 13, Subdivision 2, and Rule 15, Rules of this Court, Appellants present herewith their Jurisdictional Statement on Appeal.

Jurisdiction.

Jurisdiction is conferred by Title 28, United States Code, Section 1257.

The case was tried in the County of San Diego, State of California, and judgment rendered on August 12, 1957, in the Municipal Court of the San Diego Judicial District, County of San Diego, State of California [R. 16, 17, 18].

Notice of Appeal was duly filed in the Municipal Court on August 14, 1957 [R. 19], and thereafter the Appel-

late Department of the Superior Court rendered its memorandum decision [R. 191], reversing the judgment as to Count I and affirming the judgment as to the other counts [R. 191-192]. Thereafter, a Petition for Rehearing was duly and regularly filed [R. 193-198]. On July 29, 1958, the Appellate Department denied the Petition for Rehearing. In the said Appeal and in the Petition for Rehearing, the question of the constitutionality under the Fourteenth Amendment to the Constitution of the United States was raised throughout.

Notice of Appeal from the judgments of July 16 was duly filed September 22, 1958, or within 90 days of the rendering of the judgment [R. 202]. The record in this case and the Jurisdictional Statement are being docketed within 60 days of the filing of the Notice of Appeal [R. 202], and an extension to December 2, 1958, granted by Presiding Judge L. N. Turrentine. Judgment below was stayed by the Appellate Department of the Superior Court pending the docketing of the Appeal in the above-entitled case [R. 205].

(i) This is an Appeal from judgments of conviction in which the appellants are Silas A. Chaffin and John J. Haney and Nancy Tyner aka Nancy Haney.

The appellants, Chaffin and Haney, are doctors of chiropractic in the State of California; Nancy Tyner was a receptionist in the office, and the appellees are the People of the State of California.

The cases were commenced by Complaints in the Municipal Court of the San Diego Municipal District, County of San Diego, State of California, in one of which the appellants Chaffin and Haney were charged with violation of Section 17500, Health and Safety Code, the offense

Cases Believed to Sustain Jurisdiction.

Stromberg v. California, 283 U. S. 359, 75 L. Ed. 1117;

Hebert v. Louisiana, 272 U. S. 312, 71 L. Ed. 270;

Oyama v. California, 332 U. S. 633, 92 L. Ed. 249;

Takahashi v. Fish and Game Commissioner, 334 U. S. 410, 92 L. Ed. 478;

Yick Wo v. Hopkins, 118 U. S. 356, 30 L. Ed. 220;

Truax v. Corrigan, 257 U. S. 312, 66 L. Ed. 254;

Missouri ex rel. Gaines v. Canada, 305 U. S. 337, 83 L. Ed. 208;

Lanzetta v. New Jersey, 306 U. S. 451, 83 L. Ed. 888;

Truax v. L. Cohen Grocery Co., 255 U. S. 81, 65 L. Ed. 516;

Connaly v. General Construction Co., 269 U. S. 385, 70 L. Ed. 322;

Viereck v. United States, 318 U. S. 236, 247.

Constitutional Provisions and Statutes Involved.

Constitution of the United States, Fourteenth Amendment, Section 1:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor to deny to any person within its jurisdiction the equal protection of the laws."

Business and Professions Code, Section 17500:

"Making or disseminating untrue or misleading statement unlawful.

"It is unlawful for any person, firm, corporation or association, or any employee thereof with intent directly or indirectly to dispose of real or personal property or to perform services, professional or otherwise, or anything of any nature whatsoever, or to induce the public to enter into any obligation relating thereto, to make or disseminate or cause to be made or disseminated before the public in this State, in any newspaper or other publication, or any advertising device, or by public outcry or proclamation, or in any other manner or means whatever, any statement, concerning such real or personal property or services, professional or otherwise or concerning any circumstance or matter of fact connected with the proposed performance or disposition thereof, which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading."

Health and Safety Code, Section 26286:

"Dissemination of false advertisement.

"The dissemination of any false advertisement of a drug or device is prohiibted."

Business and Professions Code, Section 2141:

"Practice, attempt or advertising without certificate as misdemeanor.

"Any person, who practices or attempts to practice, or who advertises or holds himself out as practicing, any system or mode of treating the sick or afflicted in this State, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other mental

or physical c
at the time o
as provided
meanor."

Penal Code, Se

"Accusatory
offense.

"The accusation of any person, **without having**
"1. The ti doing a valid, unrevoked **certificate**
of the court t this chapter, is **guilty of a misde-**
names of the
"2. A stat n 950:
charged therei **eading; title of action; statement of**

Penal Code, Sect y pleading must contain:
"Indictment of the action, specifying the name
"An indictm which the same is presented, and the
stantially the ties;
State of Calif ent of the public offense or offenses
court of the
county of ..... n 951:
the district atto information; form.
hereby accuses t or information may be in sub-
wit: (giving thn llowing form: The people of the
glary, etc.), in nia against A.B. In the superior
....., 19..... ate of California, in and for the
State of Califo The grand jury (or
or omission, as ey) of the county of .....
.B. of felony (or misdemeanor), to
name of the crime, as murder, bur-
Penal Code, Secti at on or about the ..... day of
., in the county of .....,
"Statement o ia, he (here insert statement of act
or example, 'murdered C.D.')."
"In charging
and shall be su n 952:
statement that t offense.
offense therein an offense, each count shall contain,
icient if it contains in substance, a
e accused has committed some public
specified. Such statement may be

made in ordinary and concise language without any technical averments or any allegations of matter not essential to be proved. It may be in the words of the enactment describing the offense or declaring the matter to be a public offense, or in any words sufficient to give the accused notice of the offense of which he is accused. In charging theft it shall be sufficient to allege that the defendant unlawfully took the labor or property of another."

General Laws, Volume One, Act 4811, Section 7:

"Certificate to practice.

"One form of certificate shall be issued by the board of chiropractic examiners, which said certificate shall be designated 'License to practice chiropractic,' which license shall authorize the holder thereof to practice chiropractic in the state of California as taught in chiropractic schools or colleges; and, also, to use all necessary mechanical, and hygienic and sanitary measures incident to the care of the body, but shall not authorize the practice of medicine, surgery, osteopathy, dentistry, or optometry, nor the use of any drug or medicine now or hereafter included in materia medica."

Questions Presented by This Appeal.

1. Whether the word "advertisement," inherently, and as construed and applied in this case is unconstitutional and violates due process of law and equal protection under the law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

2. Whether Section 17500 of the Business and Professions Code of the State of California, inherently and as construed and applied in this case, violates due process of law guaranteed by the First and Fourteenth Amend-

ments to the Constitution of the United States in that it is too vague, indefinite and uncertain to constitute a standard of criminal guilt, and forbids freedom of speech.

3. Whether Section 26286 of the Health and Safety Code inherently and as construed and applied in this case is too vague and violates due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States in that it is too vague, indefinite and uncertain to constitute a standard of criminal guilt.

4. Whether Section 2141 of the Business and Professions Code of the State of California inherently and as construed and applied in this case violates the due process of law and equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

5. Whether Sections 950, 951 and 952 of the Penal Code of the State of California inherently and as construed and applied in this case violate due process of law and equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

6. Whether the procedure and proceeding followed in this case inherently and as construed and applied in this case deprived the appellants of a pair trial as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

7. Whether a state may constitutionally provide as a condition of probation for a crime that one may not practice his profession for which the state has licensed him, to-wit, a doctor of chiropractic.

8. Whether the search and seizure of evidence from appellants' premises without a search warrant and the

use of evidence obtained without a warrant, including the names and addresses of patients, violated the Fourth, Fifth and Fourteenth Amendments to the United States Constitution. In this respect the Court is asked to re-examine *Wolf v. Colorado.*

Concise Statement of the Case.

Appellants Drs. Chaffin and Haney are chiropractors. Nancy Tyner later became Nancy Haney. She was an assistant. They opened offices in San Diego County and thereafter an advertisement was inserted in San Diego newspapers regarding examinations that would be given to person for a charge. It was the same type of ad that has commonly appeared in newspapers.

The State Medical Board sent in a couple of their investigators, one of them a policewoman and another hired by them to undertake treatment and to pay the doctors $6.00, and thereafter the investigator for the State Medical Board, Grant Reid, caused their arrest and filed a complaint against Drs. Chaffin and Haney on January 22, 1957, charging them in a complaint with several counts of misdemeanor [R. 1-3].

Count I charged petty theft from Dorothy Pete in the sum of $6.00; Count II charged petty theft on September 10th in the sum of $21.50 from Dorothy Dreese; Count III charged false advertisements in the newspapers, pertaining to the performance of services set out in Section 17500 of the Business and Professions Code; Count IV charged violation of Section 262.86 of the Health and Safety Code in that they did "unlawfully disseminate a false advertisement of a drug"; Count V charged Dr. Chaffin with unlawfully treating a physical condition of Marilyn Donnelly in violation of Section 2141 of the

Business and Professions Code; Count VI charged a violation of Section 2141 of the Business and Professions Code in treating Marilyn Donnelly without a Physicians' and Surgeons' License.

In California, the Chiropractic Act permits a chiropractor to treat the ill and his chiropractic license permits him to go within area of treating the sick and the license is a complete defense to such treatment without a license from the medical board. It was conceded and stipulated that Drs. Chaffin and Haney both had licenses as chiropractors.

The Chiropractic Act of the State of California was passed by the people as a separate and different initiative. Nancy Haney was charged in a separate complaint with false advertising in the San Diego Union Tribune [R. 27] on the 9th day of November. The cases were consolidated. So far as this Appeal is concerned, the appellant Chaffin was convicted of "dissemination of a false advertisement of a drug," charged in Count IV of the Complaint, and of practicing medicine without a license as charged in Counts V and VI of the Complaint. Dr. Haney was convicted of practicing medicine without a license as charged in Count VI of the Complaint [R. 13], and Nancy Haney was convicted of inserting a false advertisement in the San Diego Union Tribune in violation of Section 17500 of the Business and Professions Code [R. 27]. Neither Complaint set out the alleged advertisement which it was alleged was untrue and misleading nor was the advertisement of a drug set out. The defendants entered pleas of not guilty and the two complaints were consolidated and tried jointly and before the same jury. Nancy Haney was found guilty of placing an "untrue and misleading"

statement in a newspaper concerning services [R. 14] and was given three years' probation, fined $200.00, and ordered not *to associate herself with a chiropractic profession in any way during the period of probation.*

One of the questions presented is whether a court has jurisdiction to order a person as a condition of probation not to engage in his or her profession or occupation for a period of years and whether such an order inherently violates due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

Appellant challenged the constitutionality of the procedure and the proceeding on Appeal both in his Notice of Statement of Grounds of Appeal [R. 148-150], and in his Petition for Rehearing [R. 193]. The Petition for Rehearing specifically challenges the constitutionality of the word "advertisement" [R. 197] as being too vague, indefinite and uncertain to constitute a standard of guilt, and therefore violated the Fourteenth Amendment. It also challenged the procedure and proceeding as denying appellant fair trial [R. 194-195] and also the construction and application of the Chiropractic Act which the appellant asserts is a complete defense to the charges [R. 198] of violating the Medical Practice Act. The case raises plenary questions of importance on appeal not only on the question of the definiteness of the word "advertising" and whether without further definition that word is too vague, indefinite, or uncertain, and also whether there can be advertisements by oral conversation with a single person. It is the contention of the appellant that the statute, as construed and applied by the California Courts would make any speech "advertisement" and would in fact violate the First as well as the Fourteenth Amendment to the United States Constitution.

The judgments and each of them were illegal and void in seeking unconstitutionally to deprive appellants and each of them of their right to engage in their occupation and their lawful businesses in the State of California or elsewhere. Such judgment was in violation of the Fourteenth Amendment to the Constitution of the United States. Section 26286 of the Health and Safety Code of the State of California provides that the dissemination of any false advertisement of a drug is unlawful. The word "advertisement" is not defined in the statutes. The word is too vague, indefinite and uncertain to form the basis of a standard of guilt. This question was raised in our Petition for Rehearing in the State of California and it is therefore timely. (*Lisenba v. California,* 314 U. S. 366.) [R. 197.]

The word "advertisement" is a word of many meanings. The word "advertisement" is defined by Webster's Unabridged Dictionary as follows: "A *public* notice, especially in some *public* print, as a *newspaper,* periodical, book, poster, or handbill; anything that advertises, as a newspaper having many advertisements." The statute itself gives no definition. The Court, however, defined the word "advertisement" as follows:

> "The term 'advertisement' means all representations including, but not limited to, statements upon containers, packages, cartons, and any other container disseminated in any manner or any means, including oral representation, for the purpose of inducing or which is likely to induce, directly or indirectly the purchase of drugs. You are further instructed that an advertisement of a drug shall be deemed to be false if it is false or misleading in any material particular." [R. 182.]

It is respectfully submitted that such a definition of the word "advertisement" inherently and as construed and applied in this case is unconstitutional and in violation of the Fourteenth Amendment to the Constitution of the United States. (*Lanzetta v. New Jersey,* 306 U. S. 451, 83 L. Ed. 888; *United States v. L. Cohen Grocery Company,* 255 U. S. 81, 65 L. Ed. 516; *Connaly v. General Construction Co.,* 269 U. S. 385, 70 L. Ed. 322; *United States v. Reese,* 92 U. S. 214.) The question of the definition and the meaning of the word "advertisement" has not heretofore been passed upon by this court although other courts have defined the word with wide and varying meanings. Without such definition, it is respectfully submitted that the word is too vague to form the basis of a criminal statute.

Inherently and as construed and applied in this case, the Court has defined an advertisement to mean anything declared or spoken to anyone even orally [R. 182]. This would even offend the First Amendment as to freedom of speech. Certainly it offends the Fourteenth Amendment as being beyond the scope of any statutory or ordinary definition of the word. It is submitted that the court's instruction of the word "advertisement" is such as to allow a conviction of a mere oral conversation or a mere oral representation to some person to purchase a drug.

In this connection the court instructed the jury that the term "drug" includes articles recognized in the official National Formulary.

A word such as "advertisement" and "drug" which has many meanings and applications has none legally unless it is defined by statute.

It becomes, as Humpty-Dumpty said in a rather scornful tone, in *Alice in Wonderland:* "When I use a word it means just what I use it to mean—neither more nor less."

Section 7 of the Chiropractic Act of the State of California as construed and applied in this case by the State of California is unconstitutional and in violation of the due process and equal protection clause of the Fourteenth Amendment of the Constitution of the United States, unless Section 2141 of the Business and Professions Code has also been unconstitutionally applied.

Section 2141 of the Business and Professions Code of the State of California provides that no one may practice as a physician or surgeon in the healing art without a license from the State Board of Medical Examiners. But this must be read in conjunction with Section 7 of the Chiropractic Act which provides that one licensed to practice chiropractic is also authorized to practice chiropractic in the State of California as taught in chiropractic schools and colleges; and also to use all necessary, mechanical, and hygienic and sanitary methods incident to the care of the body, but shall not authorize the practice of medicine, surgery, osteopathy, dentistry, or optometry nor the use of any drug or medicine now or hereafter included *in materia medica.* The two acts must be read together, and a license to practice chiropractic is a complete defense to the acts charged in the complaint herein and as practiced by the appellant. A denial of this right is therefore a denial of due process guaranteed by the Fourteenth Amendment of the Constitution of the United States.

The trial of this case lasted several weeks. It was mostly concerned with the charge of theft from two

women, one of whom was employed by the State Medical Board, and the other by the Police Department, they both went into defendant's establishment for the purpose of getting evidence in the case. The defendants were acquitted of the offense charged of petty theft, but convicted of an attempt to commit the same offense in two verdicts rendered by the jury on this subject. On appeal the Appellate Department of the Superior Court reversed this count and it has become moot. But the effect of this long trial of these appellants on this charge which has since been reversed was of course to result in an unfair trial as to the remaining count. A fair trial is one of the ingredients of due process of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States. It was denied each of the appellants.

As a penalty, the Court imposed not only imprisonment as to the two men for a period of six months but also provided that they were not to be allowed to practice *their profession as doctors of chiropractic.* Nancy Tyner Haney was ordered not to be associated in any way with anyone practicing this profession. It is respectfully submitted that a court has no authority to impose a condition of probation or otherwise which deprives a man of the right to practice in his profession in which he is licensed and that the Order and Judgment in doing so violate the due process of law guaranteed by the Fourteenth Amendment to the Constitution of the United States.

The alleged advertisement or form of advertisement was not set forth in the Complaint nor given to the appellants prior to the trial. Prior to 1957, Section 1426 of the Penal Code of the State of California provided that a complaint should state the name, place and persons

making the charge and the nature of the charge. This section was repealed and the substituted section as exists for the Superior Court was provided. In the California Municipal Court no practice exists, which gives the accused any information as to the nature and cause of the accusation and there the accused comes to trial under the procedure and proceeding followed in this case without notice of fact of what he has to defend against. Not even the alleged advertisement which it is charged that he made, is set forth in any form in the Complaint. It is respectfully that the State must adopt the procedure which informs the accused of the nature and cause of the accusation against and that without such notice the due process has not been conformed with.

Insufficiency of California's Procedure in the Municipal Courts to Inform the Accused so That He May Prepare for Trial.

A complaint must contain a written statement of *essential facts* constituting the offense charged. (*New Jersey ex rel. Brunell v. Brunillo,* 14 N. J. 53, 100 A. 2d 882.)

A complaint must at least set forth the basis of the prosecution sufficient to inform the accused of what he is charged with so that he may be prepared at the trial to meet the charges.

The complaint in this case did not contain the so-called advertisement, nor the form nor the character of it, and there was no way of knowing what was charged until the time of trial. This certainly does not inform an accused so that he may prepare for trial.

Such a proceeding and procedure and such a construction of Sections 950 and 952 of the Penal Code of the

No. 549

JAN 8 1959

JAMES R. BROWNING, C

In The Supreme Court of The United States

October Term, 1958.

SYLAS A. CHAFFIN and JOHN J. HANEY and NANCY TYNER aka NANCY HANEY,

Appellants,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellees.

MOTION TO DISMISS THE APPEAL

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Attorneys for Appellees.

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1958

No. _____

SILAS A. CHAFFIN and JOHN J. HANEY and NANCY TYNER, aka NANCY HANEY,

Appellants,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellees.

MOTION TO DISMISS THE APPEAL

The motions are brought pursuant to Rule 16, Subdivisions (a) and (b), Revised Rules of the Supreme Court.

I

The Jurisdictional Statement does not comply with the rules on appeal in that:

(1) As to all the points raised (1 through 8), pages 7, 8 & 9) the Statement of the Case does not specify the stage in the proceedings, the manner and method of raising and the way that they were passed upon by the court below as required by Rule 15-1(d), Revised Rules of the Supreme Court.

(2) As to points 3 and 7, they were not raised in the Notice on Appeal and therefore cannot be raised in the Jurisdictional Statement.

Rule 10-2(c), Revised Rules of the Supreme Court,

Rule 15-1(c) (2), Revised Rules of the Supreme Court.

II

The alleged federal question was not timely raised as to points 1 through 5 of the Jurisdictional Statement in that they were not raised in the appeal to the highest state court, i.e.: Appellate Division of

the Superior Court.

Wilson v. Cook, 327 U.S. 474;

Beauharnais v. Illinois, 343 U.S. 250;

Walters v. St. Louis, 347 U.S. 231;

Michel v. Louisiana, 350 U.S. 91.

III

No substantial federal question was involved as to point 8 of the Jurisdictional Statement, since the search was executed after an arrest upon a warrant and the legality of the search was decided by the state standards on such subject.

WHEREFORE, it is respectfully requested that the court dismiss this appeal.

Dated: January 2, 1959.

JEAN F. DuPAUL,
City Attorney

AARON REESE,
Assistant City Attorney

CHAFFIN ET AL. *v.* CALIFORNIA.

APPEAL FROM THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO.

No. 549. Decided February 24, 1959.

Appeal dismissed and certiorari denied.

Morris Lavine for appellants.

Aaron W. Reese for appellee.

PER CURIAM.

The motion to dismiss is granted and the appeal is dismissed. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari is denied.

APPENDIX.

In the Superior Court of the State of California, in and for the County of San Diego, Appellate Department.

The People of the State of California, Respondent and Plaintiff, vs. Silas A. Chaffin and John J. Haney, Appellants and Defendants.

The People of the State of California, Respondent and Plaintiff, vs. Nancy Tyner, aka Nancy Haney, Appellant and Defendant. No. 223238.

MEMORANDUM DECISION.

As to the conviction under count one of the complaint against the defendants Silas A. Chaffin and John J. Haney of the included offense of attempt to commit petty theft, we are of the opinion that the case of People vs. Werner, 16 Cal. 2d 216, requires a reversal.

We are also of the opinion that the record justifies the convictions of defendants Silas A. Chaffin and John J. Haney on counts four, five and six, and the conviction of the defendant Nancy Tyner, also known as Nancy Haney, on count one of the complaint against her.

It Is Therefore Ordered that the judgment of conviction on count one of the complaint against the defendants Silas A. Chaffin and John J. Haney is reversed, and the convictions on counts four, five and six, and each of them, are affirmed, and that the judgment of conviction against the defendant Nancy Tyner also known as Nancy Haney, as charged against her in count one of the complaint against her is affirmed.

Dated this 16th day of July, 1958.

/s/ TURRENTINE *P. J.*
/s/ BURCH *J.*
/s/ GLEN *J.*